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Federal Communications Commission
Office of the Secretary

WT 05-194

Representative Anthony D. Weiner

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Washington, DC 20515

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To: FCC Congressional Affairs
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Date: 8/11
Note:

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Congress of the United States
Washington, DC 20515

August 11, 2005

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AUG 17 2005

Federal Communications Commission
Office of the Secretary

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

By Fax: (202) 418-2806

Dear Chairman Martin,

We write to express our serious concerns about the so-called "early termination fees" that every major wireless phone company in the U.S. charges customers who choose to end their phone service before the expiration of the contract term. In a free market, consumers must be afforded the opportunity to drop one service and choose an alternative that does a better job of meeting their needs. As discussed more fully below, early termination penalties are charged whenever the customer requests a change in service, accepts a promotional offer, adds an additional line, and for any other change in service. Early termination penalties of \$175 or more lock many consumers into months or years of poor cell phone service that they don't want. That is unfair and anti-competitive.

A couple of years ago, we championed the FCC's wireless local number portability rule, which requires cell phone companies to allow consumers to take their phone numbers with them when they switch carriers. We supported portability because it forced cell phone companies to become more consumer-friendly. Once consumers could take their phone numbers with them, they were no longer handcuffed to a company that treated them badly or delivered poor service. The point was to increase competition, thereby improving service quality.

But the six major carriers simply employ early termination fees to circumvent wireless number portability. The cell phone industry restricts the free choice of their customers. The companies charge fixed "early termination fees" to any consumer who changes to a different carrier before their one or two-year service term ends. These penalties are typically \$175 or more. The penalty applies whether the consumer switches on day two of the term, or on day 364. The penalty also applies even when the *company* terminates the service contract for, among other things, nonpayment by the customer.

Furthermore, cell phone contract periods are extended each time a customer changes a term of their service agreement. So, a consumer can be charged a so-called *early* termination fee even after using the same company for three, four or five years. We can find no justification for these practices other than to restrict free competition.

We believe that early termination penalties undermine the purpose of cell phone number portability. Consumers are still locked into poor phone service, even though they can keep their phone number, *because they will have to pay a substantial penalty if they choose another phone company.*

On March 15, 2005, the Cellular Telecommunications & Internet Association petitioned the FCC for an expedited declaratory ruling that would prohibit state courts or legislatures from

Early Termination Fees - 1

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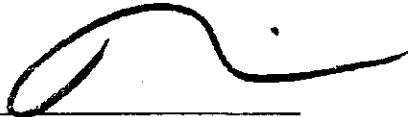
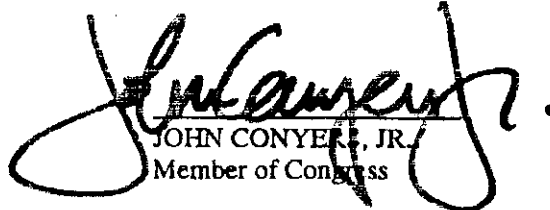

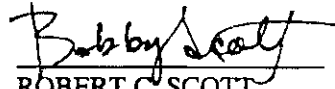

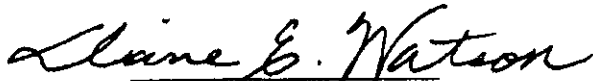
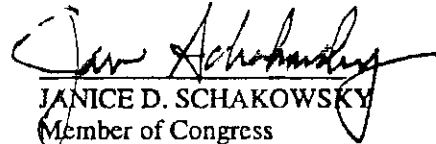

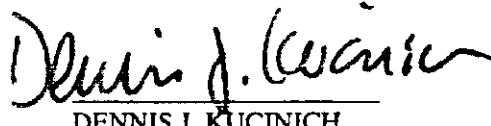
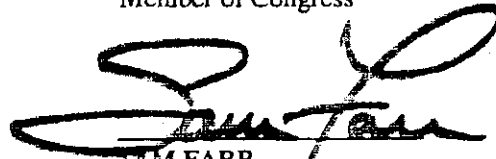
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regulating the practice of charging early termination penalties, claiming that early termination fees are "rates" under the Federal Communications Act. We strongly urge you to deny this request. We know from experience that the public is very concerned about their rights as cell phone users. We urge you not to take any action that would preclude states from enforcing their own laws to protect consumers from unfair and anti-competitive business practices.

Please let us know, at your earliest convenience, how the FCC intends to handle the industry petition and how our constituents can get their viewpoints heard. We look forward to hearing from you.

Sincerely,


ANTHONY D. WEINER
Member of Congress
JOHN CONYERS, JR.
Member of Congress
JAMES L. OBERSTAR
Member of Congress
ROBERT C. SCOTT
Member of Congress
ADAM B. SCHIFF
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